



ORGANIZATION FOR THE PROTECTION  
AND ADVANCEMENT OF SMALL  
TELEPHONE COMPANIES

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March 4, 1996

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554

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DOCKET FILE COPY ORIGINAL

Re: Interconnection Between Local Exchange Carriers  
and Commercial Mobile Radio Service Providers  
CC Docket No. 95-185

Dear Mr. Caton:

Please find enclosed for filing the original and nine copies of the Organization for the Promotion and Advancement of Small Telecommunications Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Lisa M. Zaina'.

Lisa M. Zaina  
General Counsel

No. of Copies rec'd  
List ABCDE

Handwritten initials 'AH' in a stylized cursive font.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )

Interconnection Between Local Exchange Carriers )  
and Commercial Mobile Radio Service Providers )

CC Docket No. 95-185

COMMENTS OF  
THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

OPASTCO  
21 Dupont Circle, NW  
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**COMMENTS OF  
THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

On January 11, 1996, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking<sup>1</sup> regarding interconnection arrangements between local exchange carriers (LECs) and commercial mobile radio service providers (CMRS). The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits its comments in response to the Commission's NPRM.

OPASTCO is a national trade association of more than 455 independently owned and operated telephone companies serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over two million customers. The majority of OPASTCO member companies

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<sup>1</sup>In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Notice of Proposed Rulemaking, FCC 95-505, (January 11, 1996). (NPRM)

also operate CMRS affiliates. Not only are most of these affiliates cellular, but many OPASTCO members will soon have a stake in the personal communications services (PCS) arena. Accordingly, OPASTCO has a paramount interest in the outcome of this proceeding.

## **II. BILL AND KEEP IS CONTRARY TO MARKETPLACE CONDITIONS AND PRINCIPLES**

The cellular industry has grown at a phenomenal rate, surpassing even the most optimistic prognostications. OPASTCO members have seen an incredible demand and subsequent growth of cellular services, even in remote, rural areas. Certainly the Commission's rationale for this proceeding and concern "that existing general interconnection policies may not do enough to encourage the development of CMRS"<sup>2</sup> are belied by the remarkably robust growth of the wireless industry. The Commission's tentative conclusion to federally mandate a "bill and keep" regime for all LEC / CMRS interconnection , based upon the faulty logic of stymied CMRS growth, would give already successful CMRS providers a literal "free ride" on the LEC network. OPASTCO believes that this NPRM is heavily biased toward CMRS providers, giving them an unfair competitive advantage through "differences in regulatory regimes."<sup>3</sup> The Commission should not be in the position of "picking winners" through preferential regulations.

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<sup>2</sup>NPRM at para. 2.

<sup>3</sup>NPRM at para. 17.

The Commission uses the possible suppression of PCS<sup>4</sup> as another reason to mandate bill and keep. Again, facts contradict this conclusion. As of March 1, 1996, the C Block PCS auction had garnered over \$7.6 billion in spectrum bids.<sup>5</sup> Obviously, countless marketplace analysts believe the potential profits in PCS are worth billions and that they can "compete directly against LEC wireline services"<sup>6</sup> with today's mutual compensation interconnection principles.

The Commission states in its goals that, "as with other areas of common carrier policy, we adopt policies that are intended to create or replicate market-based incentives and prices for both suppliers and consumers."<sup>7</sup> Bill and keep does not take into account traffic flows. For bill and keep to replicate market efficiency, as the Commission states, traffic must be "balanced in each direction."<sup>8</sup> This delicate balance might never happen. OPASTCO suggests that the Commission should not base long-term, or even interim policy on such an implausible happening.

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<sup>4</sup>NPRM at para. 2.

<sup>5</sup>Communications Daily, March 4, 1996, p. 4.

<sup>6</sup>NPRM at para. 2.

<sup>7</sup>NPRM at para. 4.

<sup>8</sup>NPRM at para. 61.

### **III. BILL AND KEEP IS INCONSISTENT WITH THE TELECOMMUNICATIONS ACT OF 1996**

The Telecommunications Act of 1996<sup>9</sup> is specific about interconnection and negotiations. In fact, the Act mandates that, "within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section [Interconnection]."<sup>10</sup> Accordingly, OPASTCO believes that there is no need for an interim solution given that the Commission has scheduled an NPRM on this very topic for April of this year. Many of the assumptions and arguments in the current NPRM need to be discussed in light of the Act.

In fact, the Act states that, "the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that -- (A) establishes access and interconnection obligations of local exchange carriers."<sup>11</sup> Under the Act, the Commission's tentative conclusion (made pre-Act) that they have the authority<sup>12</sup> to mandate a federal policy of bill and keep is considerably weakened. In addition, the Act states that, "an incumbent local exchange carrier may negotiate and enter into a binding agreement" and "the agreement shall

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<sup>9</sup>Pub. L. No. 104-104, 110 Stat. 56 (1996). (The Act)

<sup>10</sup>Ibid., § 251(d)(1).

<sup>11</sup>Ibid., § 251 (3)(A).

<sup>12</sup>NPRM at para. 3.

include a detailed schedule of itemized charges for interconnection."<sup>13</sup> Consequently, OPASTCO believes that privately negotiated interconnection charges are in keeping with the intent of the 1996 Act.

#### **IV. CONCLUSION**

OPASTCO strongly believes that bill and keep is not a viable federally mandated solution, be it permanent or interim. Bill and keep violates the tenets of the Telecommunications Act of 1996. Most importantly, the rationale for bill and keep, that of a competitively restrained CMRS industry, is completely at odds with the wireless industry's exponential growth.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS  
COMPANIES**

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March 4, 1996

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<sup>13</sup>Ibid., § 252 (a) (1).